Supreme Court, U.S.
FILED
JUN 11 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

October Term 1970

NO. 1538

JANIE PASSEL, ET AL.,

Appellants,

vs.

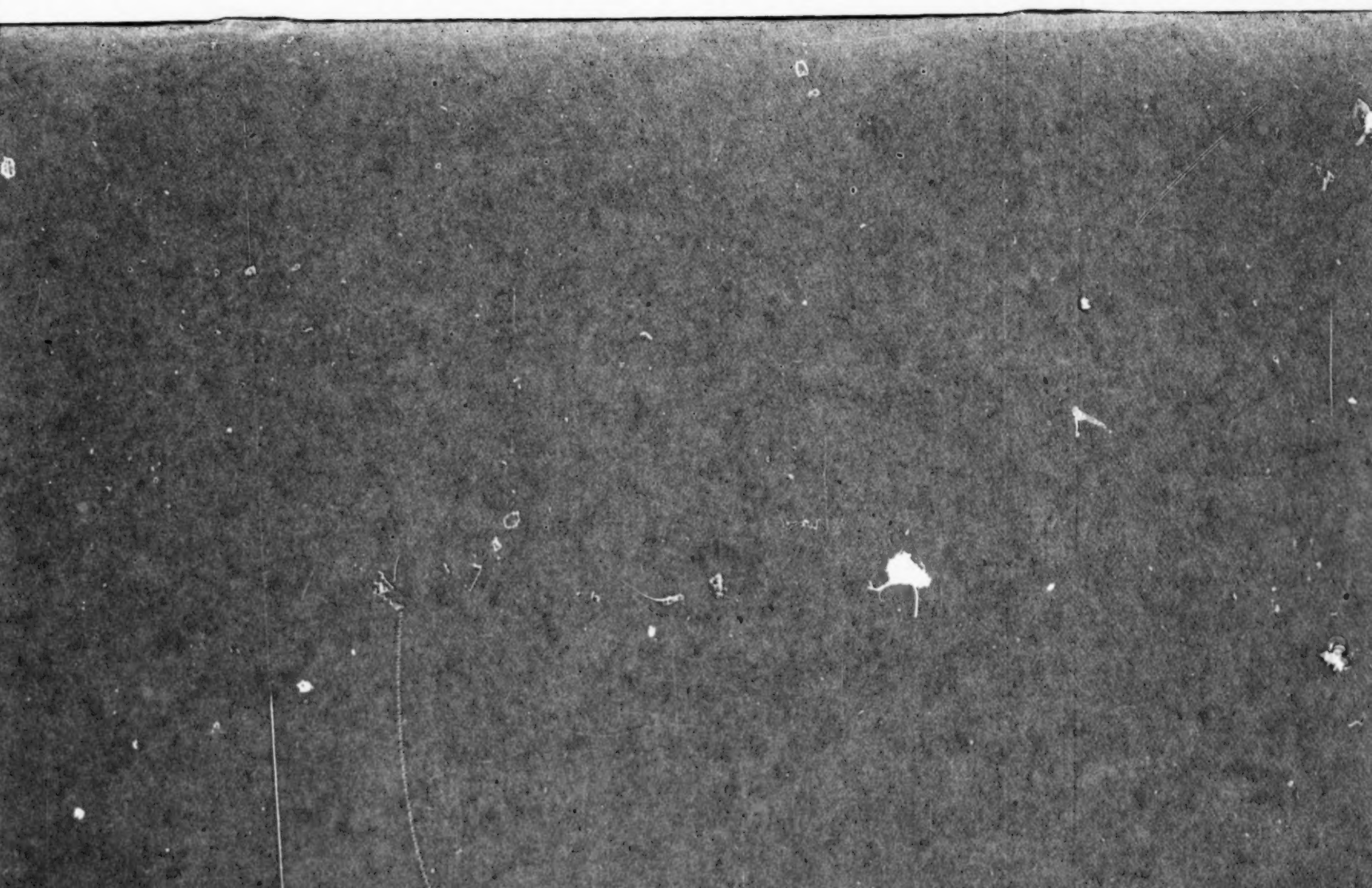
FORT WORTH INDEPENDENT SCHOOL DISTRICT, ET AL

Appellees.

On Appeal From the Court of Civil Appeals
For the Second Supreme Judicial District of Texas
at Fort Worth

Appellants' Petition for Rehearing

RUFUS S. GARRETT, JR.
919 Fort Worth National Bank Bldg.
Fort Worth, Texas 76102
Attorney for Appellants



IN THE

Supreme Court of the United States

OCTOBER TERM 1970

NO. 1538

JANIE PASSEL, ET AL.,

Appellants,

VS.

FORT WORTH INDEPENDENT SCHOOL DISTRICT ET AL.,

Appellees

APPELLANTS' PETITION FOR REHEARING

Pursuant to Rule 58, this Honorable Court is earnestly requested to grant rehearing upon its Judgment dismissing this Appeal for want of jurisdiction.

The opinion appealed from cannot be permitted to stand. Aside from Appellants' rights in the matter, and until corrected, the opinion of the Court of Civil Appeals will cause citizens of this and other states to be deprived of First Amendments rights because of the failure of this Court to find a substantial Federal question here.

The Texas Penal Statute in question (Article 301d, Appendix A), as construed by the Court of Civil Appeals, declares that any organization having a selective membership is a "Secret Society . . . inimical to the public good", and this Court has confirmed that persons enrolled in the public schools of Texas are constitutionally prohibited from membership in any such organization even during summer vacation. In short, *there is no right of "privacy in group association" for these people.* This, despite the fact that the organization is not affiliated in any

way with the public schools, has legitimate aims, and conducts all of its activities after school hours and off of school property. In this situation, what is the overriding consideration which permits the State, in the name of education or under any other pretense, to require that its citizens forego personal rights which this Court has found to be protected by the First and Fourteenth Amendments?

This Court has unequivocally announced its determination to protect privacy in group association. Has it now decided to be selective in its protection? Are sudents in public schools less entitled to First Amendment Rights than other citizens?

In Texas a "high school dropout" enjoys freedom to choose his associates, a student in the schools does not.

This refusal of this Honorable Court to find probable jurisdiction compels any person familiar with the background of this case to wonder, in dismay, what has happened to the following guidelines of First Amendment rights:

". . . *even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.*" *Shelton v. Tucker,* 364 U.S. 479, 488, 5 L.ed. 2d 231, 81 S.Ct. 247. (Emphasis added)

In the instant case no evidence whatever indicated that the "disruption" of which Appellants complain could not be avoided through less restrictive means. The evidence showed clearly that disciplinary measures had been sufficient to eliminate "disruption" where any occurred.

There was no proof of any necessity to regulate the clubs or to regulate their members except as to "on campus" behavior.

An individual is entitled to be judged by his own conduct and not that of his associates. Speiser v. Randall, 1958, 357 U.S. 513, 78 S.Ct. 1332, 2 L.ed.2d 1460, *Elfbrandt v. Russell,* 384 U.S. 11, 17, 16 L.ed.2d 321, 325, 86 S.Ct. 1238.

Isolated incidents of misconduct of individuals, usually unidentified, is the only basis for the holding that the clubs had a disruptive effect.

Proof of misconduct by some members of some organiza-

tions is an insufficient basis for the prohibition of the existence of all like organizations. Amalgamated Food Employees Union, Local 590 v. Logan Valley Plaza, Inc., 391 U.S. 308, 20 L.ed.2d 603, 88 S. Ct. 1601.

> *"First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."*

Tinker v. Des Moines Community School Dist., 393 U.S. 503 21 L.ed.2d 731, 89 S.Ct. 733. (Emphasis added)

The refusal to take jurisdiction in this case has slammed the schoolhouse doors in the face of First Amendment rights.

Unless granted relief by this Court, school age citizens become third class citizens, with fewer rights available to them than to those who complain of being "second class citizens".

Probable jurisdiction in this case should be noted to avoid a precedent which denies the existence of right of free association. We urge that this Court has an obligation to consider this case on its merits.

Respectfully submitted,

RUFUS S. GARRETT, JR.
919 Fort Worth National Bank Bldg.
Fort Worth, Texas 76102
Attorney for Appellants

CERTIFICATE

I certify that this petition for rehearing is presented in good faith and not for delay.

I further certify that I have served a copy of Appellants' Petition for Rehearing on Cecil Morgan, Esq., Morgan, Gamble & Owen, Continental Life Building, Fort Worth, Texas 76102, counsel for Appellees, by depositing a copy of same in a mail box with first class Postage prepaid this_____day of June, 1971.

_____

Rufus S. Garrett, Jr.